IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX REFERENCE NO. 316 OF 1998.

The Commissioner of Income-tax. ... Applicant.
V/s.
M/s.Naik Ice & Cold Storage. ... Respondent.

Ashok Kotangale with Parag Vyas for the respondent.

P.J.Vaidya with S.N.Inamdar for the respondent.

CORAM : V.C.DAGA AND J.P.DEVADHAR, JJ.

DATED : 4th October 2005.

P.C. :

. By this reference under section 256(1) of the Income-tax Act, 1961, the Income Tax Appellate Tribunal has referred the following questions of law for the opinion of this Court:

1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in upholding the order of the CIT(A) in which the CIT(A) had decided that the assessee was eligible for investment allowance u/s.32A of I.T.Act, 1961 on plant and machinry of the cold storage when in fact the assessee firm was merely engaged in processing activities i.e. beheading and cleaning of shrimps and prawns from the preservation point of view?

2. Whethr the Tribunal was justified in law in ignoring their earlier decision in the case of Hotel Amir (ITA No.69/PN/82) which was delivered on the basis of the Supreme Court's decision in the cse of Idandas -Vs- A.R.Phadke reported in AIR 1982 S.C. 127 on similar Facts?

. Learned counsel for the parties agreed that in view of the decision of the Apex Court in the

case of **C.I.T. v. Relish Foods**, (1999) 237 ITR 59, question No.1 is answered in the negative i.e. in favour of the Revenue and against the assessee.

. In view of answer to question No.1, question No.2 does not survive. The same is returned unanswered.

. Reference stands disposed of with no order as to costs.

(J.P.DEVADHAR, J.) **(V.C.DAGA, J.)**